

Introduction

Several times during my tenure as the Director of Contracting (DOC) at Fort Leavenworth, KS, I received a sole-source request only to find out through additional market research that there were several other valid sources that should have been identified, or another significant, pre-existing problem. (In general, sole-source contracting means that there is only one viable vendor in the marketplace able to fulfill a government requirement. In other instances, the term sole source is also used when full and open competition is consciously excluded, based on various reasons, so that preference can be given to only one vendor.) In one case, an urgent sole-source request was quickly rejected because the vendor identified by the customer was on the government's list of parties excluded from federal procurement and non-procurement programs. That means that because of the contractor's poor behavior and/or business practices in the past 3 years, they were barred from conducting business with any U.S. government agency. As such, because we are a federal contracting activity, we were forbidden from entering into any agreement with them. After the DOC discovered the information about this "alleged" sole source, the requiring activity managed, through additional research and our assistance, to find another source within 1 day.

What can be learned from this example? The first lesson is that the requiring activity was not aware of mandated responsibilities that it must fulfill in the procurement process. The second lesson is that contracting activities must inform their patrons about the statutory and regulatory mandates forbidding curtailment of other than full and open competition. This article addresses

THE COMPETITION ADVOCATE

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these issues by explaining the laws and rationale governing our actions in the contracting community.

Competition Advocate Functions

As the Fort Leavenworth DOC, I have assumed the additional title and responsibility of competition advocate for the installation. Thus, it falls on me to ensure that the basic tenant of contracting—competition—is mandated and protected. For a very good reason, this philosophy is taught to the entry-level contract workforce and continually reinforced. Real benefits are achieved through healthy competition. Conversely, there are increased costs and other negative aspects inherent in sole-source acquisitions. By limiting sole-source procurements, I help to ensure the best value for our customers and overall savings for DOD and our installations, especially in times of limited budgets. Another one of my functions is to provide valid reasons to customers regarding why we mandate competition, and to ask activities to conduct market research prior to submitting a purchase request.

Market Research

I've observed that most activities do not conduct adequate market research to identify numerous sources before they submit their requirements. Market research is defined as the process of collecting and analyzing information about the

capabilities within the marketplace to satisfy an agency's needs. It is simply a method of exploring different types of media to find good competitive sources. Some examples the DOC frequently uses are the Internet, the Yellow Pages, catalogs, newspapers, and trade journals. The Federal Acquisition Regulation (FAR) mandates that market research be the first step in all acquisitions. Therefore, to be FAR-compliant, requiring

activities should always conduct their own initial market research prior to submitting a purchase request. Most activities that do this effectively experience a smooth procurement, and are generally more satisfied with the quality and/or price of the product or service they receive.

Competition In Contracting

Another important contract tenant is competition. Competition is required in all contracting and is mandated by an important statute called the Competition in Contracting Act (CICA). Other regulations such as the FAR also provide statutory guidance. CICA requires government contract agents to enforce full and open competition on most acquisitions. This, however, conflicts with our personal buying experience in the commercial market where we often return to a familiar vendor that performed well in the past. Despite this preference, it is not legal according to CICA to limit competition for this reason. The desire is quite understandable, but the contracting community cannot support it, which sometimes causes frustrations because our customers usually don't comprehend the rationale behind our decisions. So despite the inclination to buy from a familiar source, it is prohibited because it stifles competition.

Our job as contracting experts is to educate our clientele and explain our reasoning for not supporting this concept, and to provide methods that assist in identifying other sources to adequately meet their needs. The main reason we do this, as previously stated, is that it is mandated by law passed under CICA. CICA ensures that the government-contracting agencies focus their concerns on the benefits of competition and its impact on the procurement process.

CICA Benefits

What are the benefits of competition envisioned under CICA? As a competition advocate, I am suspect of most sole-source requests and examine them closely before they are considered for approval. Why? Because the benefits of competition are good for all involved parties, especially the buyer. Competition is the basis for our market economy and also does some important things in the federal procurement arena. First, by mandating competition in federal procurements, it ultimately helps drive down prices. Second, it provides a safety net to avoid fraudulent pricing and collusive behavior. Finally, it provides a fair and even playing field for all vendors who want to do business with the U.S. government and compete for federal dollars.

FAR Guidance

Generally, there are very few sole-source procurements that meet the guidance of the FAR. FAR Part 6 is pretty clear on circumstances that will and will not allow other than full and open competition. It defines very specific reasons for sole-source procurements and it also distinguishes invalid reasons. Listed below is an extract on this subject from FAR Part 6. FAR 6.301 states the following, which explicitly outlines some reasons that are *not* acceptable for limiting competition:

(c) Contracting without providing for full and open competition shall not be justified on the basis of –

(1) A lack of advance planning by the requiring activity or

(2) Concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

FAR 6.302-1 delineates below some specific circumstances and exceptions that permit other than full and open competition:

(a) Authority

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

Very seldom is this the case with the DOC. Generally we can do more in-depth market research and are capable of identifying multiple sources that can meet most requirements.

FAR 6.302-2 also defines an unusual and compelling urgency of need. To reiterate, this is for an emergency situation, not because of an activity's failure to plan.

(a) Authority

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) Application. This authority applies in those situations where

(1) An unusual and compelling urgency precludes full and open competition, and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

Customer Education

Our goal is to continue educating and training the customers we support so that they can more effectively forecast requirements and plan their required procurement lead times. We do this by encouraging market research, conducting classes, emphasizing customer interaction, and publishing articles in a quarterly newsletter.

Conclusion

Clearly, there are still some situations where a sole source is justified, and the FAR spells out those situations. For example, in the post-September 11, 2001, environment, there were several sole-source procurements that we executed based on the urgent and compelling need outlined in the FAR. However, all sole-source requests will continue to be scrutinized and challenged to ensure for maximum competition.

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